Federal Court  Cour fédérale

Date: 20201130

Docket: IMM-5870-19

Citation: 2020 FC 1104

[ENGLISH TRANSLATION]

Montréal, Quebec, November 30, 2020

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JEAN-ROSLY CASSEUS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, a citizen of Haiti who lost his permanent resident status due to serious criminality, is seeking to have a decision dated March 19, 2019, by a senior immigration officer [officer], set aside. The officer rejected his application for pre-removal risk assessment [PRRA] on the ground that he did not meet the burden of showing there were substantial grounds to believe that, should he return to Haiti, he would be subjected to a danger of torture, a risk to his

life or a risk of cruel and unusual treatment or punishment within the meaning of paragraphs 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In this case, the applicant fears he will be detained arbitrarily for an indeterminate period in inhumane conditions on his return to Haiti. He also fears that his status as a criminalized deportee may lead to discrimination, profiling and stigma from the local community and the authorities. The applicant submits that the Haitian state is unable to protect its citizens and does not have the financial means or workforce to administer justice, including dealing with complaints of police abuse. The officer determined that the applicant failed to meet his burden of proof and that several allegations did not establish the existence of a personalized risk.

[3] Before this court, the applicant's allegations exclusively address the officer's assessment of the evidence and findings of fact. The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23 [*Vavilov*]; *Auguste v Canada (Citizenship and Immigration)*, 2020 FC 9 at paras 7–8, 15).

[4] A reasonable decision must be based on an internally coherent and rational analysis that is justified in relation to the facts and law that constrain the decision maker. In short, the decision maker is required to assess and evaluate the evidence before it. Absent exceptional circumstances, this Court must not interfere with its factual findings (*Vavilov* at para 125). That being said, "the reasonableness of a decision may be jeopardized where the decision maker has

fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[5] There is no reason to intervene in this case.

[6] The first step for a court in a judicial review is to review the decision maker's reasons to ensure that they support the conclusions in light of the record. This is the case here. Although relatively succinct, the reasons provided enable the applicant and the Court to understand why the PRRA application was rejected.

[7] Regarding the applicant's possible unjustified and prolonged detention upon his return to Haiti, the officer noted the following:

> [TRANSLATION]
> Regarding a possible unjustified and prolonged detention upon his arrival in Haiti, it is clear that Haitian authorities are aware that individuals deported from Canada may have a criminal past. However, like Canadian authorities, they have the right to screen individuals who return to their country. For Haitian authorities, these detentions are considered planned administrative detentions for the purpose of verifying whether the national has an active criminal record in the country and it also allows the authorities to track down family members who live in the country. I note that, in his PRRA application (question 5 of form IMM5508), the applicant did not state that he was or is being sought by the authorities in his country of origin. The criminal acts he committed took place in Canada, so it is reasonable to believe that he does not have a criminal past in his country of origin and there is no other reason the authorities would detain him indeterminately or without justification. Should he be detained, the detention should not drag on as with other detainees awaiting trials for offences committed on Haitian territory.
>
> The applicant did not submit any recent documentation that indicates that since the Canadian government has resumed deporting Haitian nationals, individuals placed in short-term

> preventive detention have been subjected to poor treatment amounting to a risk to life or a risk of cruel and unusual treatment or punishment. I do not feel that the applicant sufficiently demonstrated that, should he be detained, during his temporary detention he would be subjected to treatment as described in subsection 97(1) of the IRPA.

[8] Regarding actual detention conditions, the officer wrote the following:

> [TRANSLATION]
> The applicant submitted documentation related to the detention conditions and the fate of deported criminals. He alleges that, should he return to his country, because he has a criminal record, he could be detained for an indeterminate period and could be mistreated and suffer from poor conditions during his detention.
>
> As for detention conditions, I consulted the documentation the applicant submitted, and here are a few key points:
>
> > Prisons and detention centres were extremely overpopulated, especially the National Penitentiary . . . Several prisons did not have basic services such as water pipes, toilets, garbage cans, medical services.
> >
> > . . .
> >
> > Improvements: During the year, construction work on the new prison facility in Cabaret with 200 beds and an institution in Fort-Liberté with 300 beds continued. At the beginning of the year, a clinic opened at the National Penitentiary to treat inmates with multi-drug resistant tuberculosis, but also to handle urgent requests for laboratory analysis and radiology services from the prisons in the Ouest Department.
>
> [ENGLISH IN ORIGINAL]
> Improvements: The Ministry of Justice and Public Security, with assistance from international partners, opened two new prisons that conformed to international norms. In January a new women's prison opened in Cabaret with a design capacity of 300 inmates. It is equipped with classrooms,

> detention cells with toilets, a health clinic, and a solar power system.
>
> The new prison in Ft. Liberte was inaugurated in August. It had the capacity to hold 600 detainees and had its own clean drinking water supply system and a solar power system.

[TRANSLATION]
The documentation submitted and consulted indicate that the conditions in Haitian prisons do not meet international standards and there is still significant progress to be made for inmates to experience normal detention conditions. It is clear that, in the past, deported persons have faced difficult conditions in temporary detention; however, as we can see, Haitian authorities are working to improve things and infrastructure has been implemented in order to remedy the situation.

[Endnotes omitted.]

[9] Before this Court, the applicant submits that the officer erred regarding the temporary nature of any anticipated [TRANSLATION] "administrative" detention and that the finding that Haitian authorities are working to improve the prison conditions is unreasonable. In particular, the officer ignored the following three reports that were filed with the PRRA application:

(a) According to certain excerpts from the September 19, 2012, *Caribbean Journal* report "Deportations to Haiti Threaten Lives and Tear Families Apart", United States deportees are routinely detained, unjustifiably and without due process, in filthy detention centres. They are often targeted for extortion and are not issued the identity card required to obtain employment and social services.

(b) According to certain excerpts from the May 19, 2014, Center for Public Integrity report "U.S. Deportees to Haiti, Jailed Without Cause, Face Several Health Risks", Haitian prisons are condemned universally for violating human rights and

the administrative detention process is a generally arbitrary policy that violates Haitian and international law. Moreover, this report describes the administrative detention process as largely ad hoc.

(c) According to the 2015 report called "Aftershocks: The Human Impact of U.S. Deportations to Post-Earthquake Haiti", deportees with a criminal history are targets for violence, harassment and extortion by the police and society at large, and experience a wide range of threats to their well-being, including physical violence, arbitrary detention, stigmatization, malnourishment and unemployment. This report also reiterates the same disturbing descriptions regarding the administrative detention process and Haitian prisons.

[10] I am not satisfied that the officer committed a reviewable error.

[11] Regarding the allegation that the officer ignored the reports noted by the applicant, the officer is not required to comment on specific passages of the documentary evidence, particularly since in this case they were very broad in nature (*Anand v Canada (Citizenship and Immigration)*, 2007 FC 234 at para 22 citing *Thavachelvam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1604 at para 13; *Hassan v Canada (Employment and Immigration)*, (1992) 147 NR 317 at p 318). It was the applicant's responsibility to provide convincing evidence that there is an objective and personalized risk in Haiti (*Arenas Pareja v Canada (Citizenship and Immigration)*, 2008 FC 1333 at para 24; *Jean v Canada (Citizenship and Immigration)*, 2009 FC 593 at para 47; *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 5 at para 40; *Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31). In this case,

the officer did not rule out the possibility that the applicant might be temporarily detained for administrative purposes (to verify whether he might have a criminal past in Haiti, among other things). Moreover, this is not an accused being detained while awaiting trial. Since the applicant did not state that he was being sought by the Haitian authorities, the officer concluded that any administrative detention would not be long term. The applicant did not show that this inference is capricious or arbitrary.

[12] Additionally, it is clear that the officer considered the documentation the applicant submitted (CTR at pages 10 to 12). The officer considered not only the positive aspects (opening a [TRANSLATION] "clinic" and new prisons with basic services), but also the negative aspects ([TRANSLATION] "extremely overpopulated" prisons and centres, limited access to [TRANSLATION] "basic services"). Regardless, the officer considers that the situation has evolved and improved, even though conditions remain difficult and do not meet international standards. These are findings of fact based on the documentary evidence in the record. This type of finding warrants a significant degree of deference (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paras 64, 72; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 61; *Derisca v Canada (Citizenship and Immigration)*, 2013 FC 524 at para 48; *Mombeki v Canada (Citizenship and Immigration)*, 2020 FC 931 at para 27).

[13] Lastly, regarding the fear of profiling by the local population because the applicant is part of the diaspora, the officer notes that, according to the documentation, [TRANSLATION] "the risk of being a victim of crime is not exclusive to members of the diaspora", while [TRANSLATION]

“Haitians who are deported to Haiti are not at risk because, for one, they are considered to have no resources” (Applicant’s Record, at pp 16, 54-55). As for the authorities’ complacency in supressing acts of violence in the country as well as police abuse, this is not a personalized risk according to the officer. His conclusions are based on the documentary evidence and are consistent with the case law of this Court (*Morales Alba v Canada (Citizenship and Immigration*), 2007 FC 1116 at paras 31, 32; *Matute Andrade v Canada (Citizenship and Immigration)*, 2010 FC 1074 at para 48).

[14] In conclusion, while the Court can understand the applicant’s frustration and disappointment, this is not an appeal. In this case, when the impugned decision is reviewed as a whole, even if another outcome seems possible, the officer conducted an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). Therefore, there is no reason for this Court, on judicial review, to intervene or reassess the evidence considered by the officer (*Vavilov* at paras 125–126; *Nathaniel v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 32 at para 35).

[15] For these reasons, the application for judicial review is dismissed. The parties have not submitted a question of general importance.

JUDGMENT in IMM-5870-19

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"
Judge

Certified true translation
This 7th day of December 2020

Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5870-19
STYLE OF CAUSE:	JEAN-ROSLY CASSEUS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	CASE HEARD BY VIDEOCONFERENCE IN MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 19, 2020
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	NOVEMBER 30, 2020

APPEARANCES:

Julien Labrie-Masse, Counsel	FOR THE APPLICANT
Lisa Maziade, Counsel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Legal Aid Montréal Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT